

Seminar or training session providers incur Retailers' Occupation Tax on gross receipts from sales in Illinois of seminar or training materials such as workbooks and reference materials. See 86 Ill. Adm. Code 130.101. (This is a GIL.)

July 15, 2005

Dear Xxxxx:

This letter is in response to your letter dated October 5, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am writing to request clarification on the taxability of training and live data feeds in the State of Illinois. I would like to receive a Private Letter Ruling on this subject.

I am an individual who has joined a multi-level marketing program. I am considered an Independent Business Associate of the company.

The company, ABC

is in the business of selling training courses and live data feeds. They are charging Illinois Sales Tax on the courses and live data feeds. Their position is one of prudence i.e. they are charging the tax just to make sure they are complying with all laws in the State of Illinois. My position is that the services they offer are not tangible personal property and are therefore not subject to Illinois Sales Tax.

I have purchased two services from them:

- 1) Training program (which included a training binder) – one time fee
- 2) On going live data feeds via the internet - monthly fee

on which I was charged Illinois Sales Tax.

Regarding the taxability of the training course:

Is the course subject to Sales Tax in the State of Illinois

- 1) if I attended the course out of state?
- 2) if I attended the course within Illinois?
- 3) if I took the course via the internet?

Regarding the taxability of the live data feeds via the internet:

- 1) Are the live data feeds via the internet subject to Illinois Sales Tax?

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq., imposes a tax upon persons engaged in the business of selling tangible personal property at retail. A "sale at retail" is any transfer of the ownership of, or title to, tangible personal property to a purchaser for valuable consideration for use or consumption and not for resale. See 86 Ill. Adm. Code 130.101 and 130.201.

In general, sales of service that do not involve the transfer of tangible personal property are not subject to tax in Illinois. See 86 Ill. Adm. Code 140.101. The Department does not consider the viewing and downloading of text and other data over the internet to be the transfer of tangible personal property. Therefore, the on-line course and the live data feeds over the internet are not subject to liability under the Retailers' Occupation Tax Act, Use Tax Act, Service Occupation Tax Act, or Service Use Tax Act. Please note, however, the transfer of any canned software (or update of canned software) is considered the transfer of tangible personal property and will be subject to Retailers' Occupation Tax and Use Tax liability. Sales of canned software are taxable regardless of the means of delivery. See 86 Ill. Adm. Code 130.1935(a). For instance, the transfer or sale of canned software downloaded electronically would be taxable.

Seminar or training session providers incur Retailers' Occupation Tax on the gross receipts from sales in Illinois of seminar or training materials such as workbooks and reference materials that are transferred in a tangible format, such as written materials or computer disks. The tax base is the selling price of the materials. The sales of these materials are subject to Retailers' Occupation Tax whether the materials are sold separately or as a part of the total tuition charge for the seminars. If the materials are sold as part of the total tuition charge, the providers must allocate the amount for the selling price of the materials and charge tax on that amount.

To determine whether a person is subject to the tax obligations or tax collection obligations of this State, please see the discussion of nexus set out in General Information Letter ST-04-0110-GIL. The general information "Sunshine Letters" may be found on the Department's internet website under the heading of "Legal Research."

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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